

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 09/746,045 Conf. No.: 9048
Inventor: Antonio J. Colmenarez
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TC/AU: 2629
Examiner: Shapiro, Leonid
Docket No.: US000403(PHB-10-6144)
Customer No.: 24737

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

August 27, 2007

REPLY BRIEF

Dear Sir:

In response to the Examiner's Answer mailed July 2, 2007, please reconsider the above-identified application in view of the following comments:

Remarks/Arguments begin on page 2 of this paper.

REMARKS/ARGUMENTS

Claims 1

Independent claim 1 recites *at least one light source in a movable hand-held device, the movable hand-held device being capable of sending control signals to a remotely controllable device; at least one light detector that detects light from said light source; and a control unit that receives image data from the at least one light detector, wherein the control unit detects the position of the hand-held device relative to a position of a user of the movable hand-held device in at least two dimensions from the image data from the at least one light detector and translates the position to control a feature on a display, wherein a change of said feature corresponds to a movement of the movable hand-held device relative to the user.* The Office has maintained the rejection of this claim under 35 U.S.C. §103(a) as being unpatentable over Girod (US 6,677,987) in view of Livits (US 5,661,505).

In the "Response to Arguments" section of the Examiner's Answer dated July 2, 2007, the Office asserts that, on page 8 in the first paragraph of the Appeal Brief, "Applicant's stated that Livits says nothing about detecting position of the housing. However, this feature was shown by Girod reference." This statement misconstrues Applicant's argument.

The cited portion of of the Appeal Brief states that "Livits states nothing about detecting [the] position of the housing *relative to the user*" as required by claim 1. (emphasis added). Moreover, the Examiner's Answer fails to even allege and indeed concedes that such a limitation is not disclosed by Girod. *See* Examiner's Answer page 4, first and second paragraphs. Consequently, any assertion that Applicant has improperly attacked the references individually is misplaced.

As note previously, the present claim requires that *the control unit detect[s] the position of the hand-held device relative to a position of a user of the movable hand-held device*. Livits, in constrast, teaches that the position of the keyboard is detected relative to the horizontal surface such as a desktop.

The Office also asserts that since the functionality of keys change relative to a position of the keyboard with respect to a horizontal surface, the functionality of keys also change relative to a position of a user. Assuming, *arguendo*, that this assertion is correct, Livits remains deficient with respect to *detecting* the position of a device relative to a position of a user. Instead, as noted above and in the Appeal Brief, Livits detects the position of a device relative to a horizontal surface.

The Office additionally asserts that, on page 8, first paragraph of the Appeal Brief, "Applicant's stated Livits says nothing about particular functionality. However, translation of the position to control feature on a display was shown by Girod reference." Again, it appears that the Office has misinterpreted the arguments in the Appeal Brief, which were directed towards *the control unit detects the position of the hand-held device relative to a position of a user of the movable hand-held device*. As noted above, the Examiner's Answer fails to allege and indeed concedes that Girod discloses such a requirement, and cites Livits to remedy the deficiency. It is maintained, however, that Livits teaches that functions of keys on a keyboard change relative to a position of the keyboard with respect to a horizontal surface. Thus, as taught by Livits, the position of the keyboard with respect to a user has no bearing on the functions performed by the keys.

The Office additionally states that one cannot show obviousness by attacking references individually where the rejections are based on combinations of references. In response, it is submitted that to establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (MPEP §2142). It is respectfully submitted that the Office has failed to establish a *prima facie* case of obviousness, as the portions of Livits cited by the Office as teaching *a control unit that detects the position of a hand-held device relative to a position of a user of the movable hand-held device... wherein a change of a feature corresponds to a movement of the movable hand-held device relative to the user* are devoid of such features.

Application No. 09/746,045
Reply Brief: August 27, 2007
Reply to Examiner's Answer Dated: July 2, 2007

For at least the reasons presented above and in previous correspondence, it is respectfully submitted that claims 23, 28, and 29 are also allowable (and claims dependent from claims 1, 23, 28, and 29).

Conclusion

In view of the foregoing, it is submitted that the pending claims distinguish patentably and non-obviously over the prior art of record. An early indication of allowability is earnestly solicited.

Respectfully submitted,
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